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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,228	08/29/2003	Daniel D. Evans	0316	8913

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EXAMINER

MITCHELL, KATHERINE W

ART UNIT PAPER NUMBER

3677

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/651,228	EVANS, DANIEL D.	
	Examiner	Art Unit	
	Katherine W. Mitchell	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-12,23 and 34-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-12,23 and 34-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/17/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 4 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 3 includes all the limitations of claim 4, and claim 4 depends from claim 3.
2. Claim 5 is objected to as "in the configuration of louvers" is unclear - louvers can be configured in many ways. Examiner is assuming that planar is a louver configuration, since louvers are generally planar slats.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6, 8-12, 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Cogdill, USP 3518421.

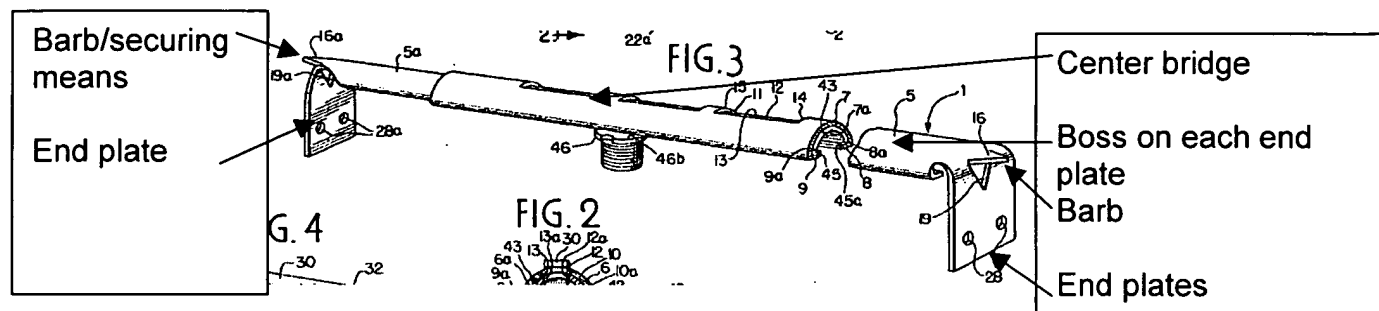
Re claims 1, 34, Cogdill teaches an apparatus capable of holding conduits in a trench having a bottom and a pair of sides, comprising in combination:

a center bridge portion capable of being disposed against the conduits in the trench;

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a pair of end plates secured to the center bridge and capable of being disposed against the trench sides, and

a boss on each end plate extending outwardly from the endplate for receiving the bridge.



Further Re claim 34: The end plate is capable of being secured to a trench wall, and retaining at least a single conduit.

Re claim 2 and further re claim 34: "16", "16a" is the securing means /barb.

Re claims 3-4 and 37: The barb/securing means 16 extends upwardly and outwardly from the end plate, as shown in Fig 3 above.

Re claim 5 and 38: Since the barbs are planar, they are considered in the configuration of louvers.

Re claim 6: Barbs 16 and 16a are generally parallel to each other.

Re claims 8-9 and 35: The end plates are rectangular, and include apertures 28.

Re claims 10 and 36: Col 2 lines 55-62 disclose the apertures 28 are nail holes.

Nails are considered spikes and are capable of anchoring the end plates in non-cohesive soil.

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spike (spīk) *noun*

1. a. A long, thick, sharp-pointed piece of wood or metal. b. A heavy nail.¹

Re claim 11 - the center bridge comprises a single member. Note that

“comprises” allows additional members in addition to a single member.

Re claim 12: The semicircular cross sectional shape of the bridge is considered “generally circular”.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cogdill in view of Solbjorg USP 5827441.

¹Excerpted from *The American Heritage Dictionary of the English Language, Third Edition* Copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from Lernout & Hauspie Speech Products N.V., further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

Fig. 1a
 (PRIOR ART)

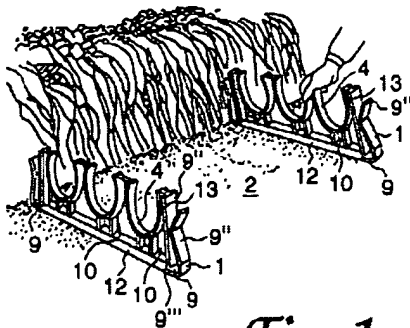


Fig. 1b
 (PRIOR ART)

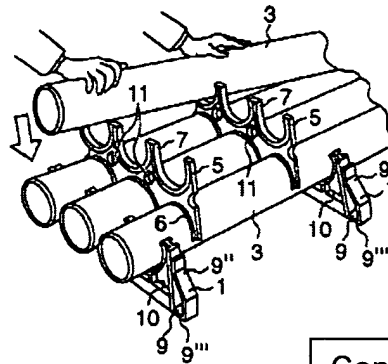


Fig. 1c
 (PRIOR ART)

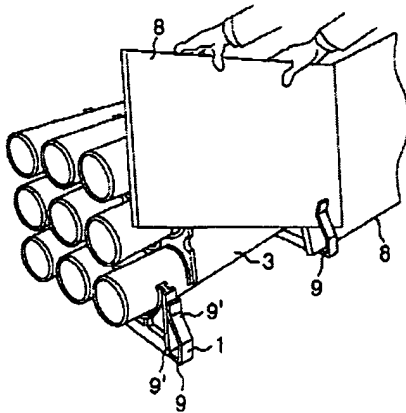
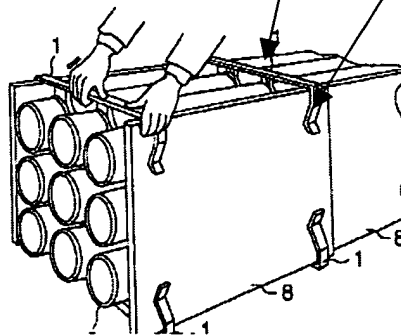
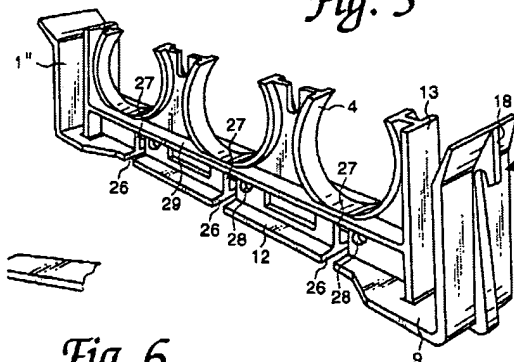


Fig. 1d
 (PRIOR ART)



Center bridge
 End plates

Fig. 5



Louvre (plate structure)
 Barb (attached to louver)

Fig. 6

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As discussed above, Cogdill teaches all the elements except the use of the apparatus with a trench having non-cohesive soil. Examiner notes that applicant is not claiming merely the intended use, but is positively requiring a trench with non-cohesive soil. Non-cohesive soil is shown in Figs 1a and as taught in col 2 below:

FIGS. 1a-1d show the assembling of a casting mould in accordance with the previously known technique. Concrete is to be poured into the casting mould in order thereby to
45 form a pipe assembly, preferably for cables. As can be seen from FIG. 1a, base parts 1 included in the casting mould and preferably made of plastic material are first placed at a distance from one another on the ground which has already been levelled, most often on the bottom 2 of a pit or a trench.
50 A first row of plates 3 is then arranged into place in manner

that it is well known to place conduits or pipe in trenches or pits. Col 4 lines 13-20

discloses a hole on the end plates for securing them in place with spike (nails).

"Relatively long" is a very broad term -- the nails are considered relatively long to go through apertures 18". While non-cohesive is not explicitly taught, soil in a trench is considered inevitably non-cohesive - note that OSHA and other safety regulations require shoring, safety harnesses and standby personnel, in the event that the trench collapses due to non-cohesiveness.

Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Cogdill and Solbjorg before him at the time the invention was made, to modify Cogdill in view of Solbjorg to include using the apparatus with a trench, in order to obtain secure and proper spacing of the conduits, as taught by Solbjorg col 1 lines 25-62.

Response to Arguments

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7. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W. Mitchell whose telephone number is 571-272-7069. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Katherine W Mitchell
Primary Examiner
Art Unit 3677



Kwm
1/30/2006